

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RICHARD GAIL LEES,

Plaintiff,

v.

GRETCHEN WHITMER, *et al.*,

Defendants.

CASE NO. 1:21-CV-820

HON. ROBERT J. JONKER

ORDER APPROVING AND ADOPTING
REPORT AND RECOMMENDATION

The Court has reviewed Magistrate Judge Green’s Report and Recommendation in this matter (ECF No. 8) and Plaintiff’s Objections to the Report and Recommendation (ECF No. 9).¹ Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, “[t]he district judge . . . has a duty to reject the magistrate judge’s recommendation unless, on de novo reconsideration, he or she finds it justified.” 12 WRIGHT, MILLER, & MARCUS, FEDERAL PRACTICE AND PROCEDURE, § 3070.2, at 451 (3d ed. 2014). Specifically, the Rules provide that:

The district judge must determine de novo any part of the magistrate judge’s disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

FED. R. CIV. P. 72(b)(3). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981).

¹ The Court construes as Objections Plaintiff’s filing styled as “emergency motion for writ of mandamus” (ECF No. 9).

The Court has reviewed de novo the record before the Magistrate Judge; the Report and Recommendation itself; and Plaintiff's Objections. The Court finds the Magistrate Judge's Report and Recommendation, which recommends dismissing Plaintiff's complaint under 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim upon which relief may be granted, factually sound and legally correct.

The Magistrate Judge carefully and thoroughly considered all matters of record and the governing law. Plaintiff's Objections do not address the Report and Recommendation in any persuasive way. The Objections primarily amplify assertions Plaintiff has already made and the Magistrate Judge has already properly addressed. Nothing in Plaintiff's Objections changes the core analysis in this case. For the very reasons the Report and Recommendation details, Plaintiff fails to state a claim upon which relief may be granted, and his complaint must be dismissed under 28 U.S.C. § 1915(e)(2)(B)(ii).

ACCORDINGLY, IT IS ORDERED:

1. The Report and Recommendation of the Magistrate Judge (ECF No. 9) is **APPROVED AND ADOPTED** as the opinion of the Court.
2. Plaintiff's Objections (ECF No. 9) are **OVERRULED**.
3. This case is **DISMISSED**.
4. For the same reasons that the Court dismisses Plaintiff's claims, the Court discerns no good-faith basis for an appeal within the meaning of 28 U.S.C. § 1915(a)(3). *See McGore v. Wrigglesworth*, 114 F.3d 601, 611 (6th Cir. 1997) (overruled on other grounds by *Jones v. Bock*, 549 U.S. 199 (2007)).

Dated: October 12, 2021

/s/ Robert J. Jonker
ROBERT J. JONKER
CHIEF UNITED STATES DISTRICT JUDGE